

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ALVIN BALDUS, et al.,

Plaintiffs,

TAMMY BALDWIN, et al.,

Intervenor-Plaintiffs,

vs.

Case No. 11-CV-562
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants,

F. JAMES SENSENBRENNER, JR., et al.,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC., et al.,

Plaintiffs,

vs.

Case No. 11-CV-1011
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants.

**ANSWER OF INTERVENOR-DEFENDANTS SENSENBRENNER, ET AL.
TO SECOND AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF
(No. 11-CV-562)**

The Intervenor-Defendants, F. James Sensenbrenner, Jr., Thomas E. Petri, Paul D. Ryan, Jr., Reid J. Ribble, and Sean P. Duffy (collectively, the “Republican House Members”), by their undersigned attorneys, for their answer-in-intervention to the Second

Amended Complaint for Declaratory and Injunctive Relief (hereinafter, the “Amended Complaint”), admit, deny, allege, and state as follows:

SUMMARY

The Intervenor-Defendants are the incumbent Republican Members of the House of Representatives from Wisconsin. They represent the people of the current First, Fifth, Sixth, Seventh, and Eighth Districts in the 112th Congress. Each of them currently expects to be a candidate for re-election to the House in the November 2012 general election (and, if necessary, the August 2012 primary election).

The clear primary focus of the plaintiffs’ attention in the Amended Complaint is 2011 Wisconsin Act 43, which contains the boundaries that will, unless that Act is held to be unconstitutional or otherwise illegal, apply in future elections to the Wisconsin Legislature. The references throughout the Amended Complaint to “legislative districts” are to the districts drawn in Act 43. The Amended Complaint attacks Act 43 under various provisions of the United States Constitution, the federal Voting Rights Act, and the Wisconsin Constitution.

The Amended Complaint also claims that a different statute, 2011 Wisconsin Act 44, which contains the boundaries that will apply in future elections to the House of Representatives, violates the United States Constitution. These claims are contained in the Fourth, Fifth, and Eighth Claims of the Amended Complaint. The references throughout the Amended Complaint to “congressional districts” are to the districts drawn in Act 44. The Wisconsin Constitution does not refer to Congressional redistricting, and the Amended Complaint does not contend that Act 44 violates the federal Voting Rights Act.

The Republican House Members have no distinctive or particular legal interest in the constitutionality of Act 43 and do not intend, in this Answer or in this action generally, to

take any position with respect to that Act. They do, however, assert and maintain that Act 44 is valid and constitutional and that the plaintiffs' attack on it is wholly lacking in merit.

Accordingly, throughout this Answer, the Republican House Members intend, by stating that an allegation in the Amended Complaint "relates to Act 43," or by using similar language, to state that — because the allegation is not (or does not appear to be) part of the plaintiffs' challenge to Act 44, which is the only challenge against which the Republican House Members defend — they do not answer the allegation or they lack knowledge or information sufficient to form a belief as to its truth.

The four un-numbered "summary" paragraphs at the outset of the Amended Complaint state the plaintiffs' litigating positions and legal conclusions generally and, therefore, need be and are neither admitted nor denied.

JURISDICTION

1. Admit the allegations in paragraph 1, except deny that either the Three-Judge Court Act, 28 U.S.C. § 2284, or the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, confers subject matter jurisdiction.

2. Some of the allegations in paragraph 2 relate to Act 43; deny them insofar as they relate to Act 44.

3. In response to the allegations in paragraph 3, state that a district court of three judges has already been convened; admit that three-judge courts were convened in Wisconsin apportionment cases in 1982, 1992, and 2002; deny that the complaints in those cases were like the Amended Complaint in this case, because in each of those cases no redistricting statutes had been enacted by the Legislature, whereas valid redistricting statutes have been enacted in 2011.

VENUE

4. Admit the allegations in paragraph 4 respecting the residences of the defendants; state that they lack knowledge or information sufficient to form a belief as to truth of the allegations respecting the residences of the plaintiffs.

PARTIES

5. State that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and its subparagraphs, except deny that the rights of any of the plaintiffs are harmed or threatened by Act 44.

6. Upon information and belief, admit the allegations in paragraph 6, except that each of the subparagraphs thereof state legal conclusions that need be and are neither admitted nor denied.

CONSTITUTIONAL AND STATUTORY PROVISIONS / FACTS

7. State that paragraph 7 states legal conclusions that need be and are neither admitted nor denied.

8. State that paragraph 8 states legal conclusions that need be and are neither admitted nor denied.

9. State that paragraph 9 states legal conclusions that need be and are neither admitted nor denied.

10. State that paragraph 10 states legal conclusions that need be and are neither admitted nor denied.

11. State that paragraph 11 states legal conclusions that need be and are neither admitted nor denied.

12. State that paragraph 12 states legal conclusions that need be and are neither admitted nor denied.

13. State that paragraph 13 states legal conclusions that need be and are neither admitted nor denied.

14. Admit the allegations in paragraph 14.

15. Admit the allegations in paragraph 15.

16. Paragraph 16 relates to Act 43.

17. Paragraph 17 relates to Act 43.

18. Paragraph 18 relates to Act 43.

19. Some of the allegations in paragraph 19 relate to Act 43; state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations insofar as they relate to Act 44.

20. Some of the allegations in paragraph 20 relate to Act 43; state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations insofar as they relate to Act 44, except admit that on July 19 and 20, 2011, the Wisconsin Legislature adopted legislation that contained Congressional districting boundaries based on the results of the 2010 Census and that, upon approval by the Governor on August 9, 2011, became Act 44.

21. Paragraph 21 relates to Act 43.

22. Admit the allegations contained in paragraph 22, except state that, because the whole population of Wisconsin is not evenly divisible by eight, the precise ideal population for some Congressional districts is one larger than for others.

23. State that paragraph 23 states legal conclusions that need be and are neither admitted nor denied.

24. With respect to the allegations in paragraph 24, admit that on July 19 and 20, 2011, the Wisconsin Legislature adopted legislation that contained Congressional districting boundaries based on the results of the 2010 Census and that, upon approval by the Governor, became Act 44; state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations respecting what the plaintiffs refer to as “legislative process and schedule.”

25. With respect to the allegations in paragraph 25, admit that Act 44 created Congressional districts with total population deviations as inconsequential as the laws of arithmetic permit.

CLAIMS FOR RELIEF

26. Some of the allegations in paragraph 26 relate to Act 43; deny them insofar as they relate to Act 44.

27. Some of the allegations in paragraph 27 relate to Act 43; deny them insofar as they relate to Act 44.

FIRST CLAIM

28. Paragraph 28 relates to Act 43.

29. Paragraph 29 relates to Act 43.

30. Paragraph 30 relates to Act 43.

31. Paragraph 31 relates to Act 43.

32. Paragraph 32 relates to Act 43.

33. Paragraph 33 relates to Act 43.

34. Paragraph 34 relates to Act 43.

SECOND CLAIM

- 35. Paragraph 35 relates to Act 43.
- 36. Paragraph 36 relates to Act 43.
- 37. Paragraph 37 relates to Act 43.
- 38. Paragraph 38 relates to Act 43.
- 39. Paragraph 39 relates to Act 43.
- 40. Paragraph 40 relates to Act 43.
- 41. Paragraph 41 relates to Act 43.
- 42. Paragraph 42 relates to Act 43.

THIRD CLAIM

- 43. Paragraph 43 relates to Act 43.
- 44. Paragraph 44 relates to Act 43.
- 45. Paragraph 45 relates to Act 43.
- 46. Paragraph 46 relates to Act 43.
- 47. Paragraph 47 relates to Act 43.
- 48. Paragraph 48 relates to Act 43.

FOURTH CLAIM

49. Incorporate by reference their responses in paragraphs 1 through 48 above, as if set forth fully herein.

50. State that paragraph 50 states legal conclusions that need be and are neither admitted nor denied; allege affirmatively that, insofar as this and subsequent paragraphs of the Amended Complaint attempt to enforce the “state constitution[],” or state “constitutional standards” (*see* ¶ 52), or “Wisconsin’s redistricting principles” (*see* ¶ 60.b), this Court lacks

authority to enforce state law against state officials, under the teaching of *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), and subsequent cases.

51. State that paragraph 51 states legal conclusions that need be and are neither admitted nor denied.

52. Deny the allegations in paragraph 52, except that:

a. With respect to subparagraph a thereof, state that Act 44 extends the southern boundary of the 7th Congressional District a short distance farther south, into Jackson, Monroe, and Juneau Counties, than the previous Congressional districting legislation adopted with bi-partisan support in 2002, under which the southern border of Wood and Portage Counties was the southern boundary of the district (*see* 2009-10 Wis. Stat. §§ 3.17(1)); further deny that the Village of Necedah and its surrounding townships can be fairly described as “just north of Madison.”

b. With respect to subparagraph b thereof, state that Act 44, like the previous Congressional districting legislation, places the southwest corner of the state in the 3rd Congressional District, but, unlike that prior legislation (*see* 2009-10 Wis. Stat. §§ 3.13(1)), places St. Croix County, the Wisconsin county nearest to the Twin Cities of Minnesota, in the 7th Congressional District; further state that the center of the State of Wisconsin is east of Minnesota, not west.

c & d. With respect to subparagraphs c and d thereof, state that the population density of much of the State of Wisconsin makes it impossible to draw Congressional districts that comply with the one-person, one-vote Constitutional mandate, as Act 44 does, without some of those districts’ covering large geographical expanses; further state that the 3rd, 7th, and 8th Congressional Districts under Act 44 and both the immediately

preceding Congressional redistricting legislation and Congressional districting legislation going back into the Nineteenth Century demonstrate this fact.

53. State that paragraph 53 states legal conclusions that need be and are neither admitted nor denied.

54. State that paragraph 54 states legal conclusions that need be and are neither admitted nor denied.

55. Deny the allegations in paragraph 55, except that:

a. With respect to subparagraph a thereof, state that Act 44 leaves the portion of the City of Appleton lying in Winnebago County in the 6th Congressional District and the portion of Appleton lying in Outagamie County in the 8th Congressional District, as they were under the previous Congressional districting legislation adopted with bipartisan support in 2002 (*see* 2009-10 Wis. Stat. §§ 3.16 & 3.18); admit that Act 44 joins all portions of Appleton lying in Calumet County together in the 8th Congressional District, whereas the previous Congressional districting legislation split those portions of Appleton between the 6th and 8th Congressional districts; further state that Act 44 leaves those portions of the City of Menasha lying in Winnebago County and all of the City and Town of Neenah (which lie in Winnebago County) in the 6th Congressional District, and that the Act joins that portion of Menasha lying in Calumet County with the rest of Calumet County as part of the 8th Congressional District; allege that all of the plaintiffs' allegations in this subparagraph appear to stem from Act 44's joining together all of Calumet County as part of the 8th Congressional District, instead of splitting it, as the previous legislation did, between the 6th and 8th Congressional Districts (*see id.*).

b. With respect to subparagraph b thereof, state that Act 44 joins the portion of the City of Milwaukee lying in Waukesha County with the rest of that City as part of the 4th Congressional District, rather than leaving it separated from the adjoining portions of Milwaukee, as the previous Congressional districting legislation did (*see* 2009-10 Wis. Stat. § 3.15(f)), so that all of the City of Milwaukee now lies within a single Congressional district; deny any implication that Act 44 dilutes minority voters' influence in the 4th Congressional District; admit that Act 44 moves the Village of River Hills and portions of the Village of Bayside lying in Milwaukee County from the 5th Congressional District into the 6th Congressional District, along with the portion of Bayside lying in Ozaukee County, which is the only reason that portions of Milwaukee County now lie in four Congressional districts, rather than three under the previous legislation.

56. In response to paragraph 56, state that they assume that the GAB will carry out its statutory responsibilities; deny each and every one of the remaining allegations in paragraph 56.

57. Deny the allegations in paragraph 57.

FIFTH CLAIM

58. Incorporate by reference their responses in paragraphs 1 through 57 above, as if set forth fully herein.

59. State that paragraph 59 states legal conclusions that need be and are neither admitted nor denied.

60. Some of the allegations in paragraph 60 and the subparagraphs thereof relate to Act 43; deny them insofar as they relate to Act 44.

61. Some of the allegations in paragraph 61 relate to Act 43; deny them insofar as they relate to Act 44.

62. Some of the allegations in paragraph 62 relate to Act 43; deny them insofar as they relate to Act 44; all the subparagraphs of paragraph 62 relate to Act 43.

63. Paragraph 63 relates to Act 43.

64. Paragraph 64 relates to Act 43.

65. Some of the allegations in paragraph 65 relate to Act 43; deny them insofar as they relate to Act 44.

66. Some of the allegations in paragraph 66 relate to Act 43; deny them insofar as they relate to Act 44.

67. Some of the allegations in paragraph 67 relate to Act 43; deny them insofar as they relate to Act 44.

68. Some of the allegations in paragraph 68 relate to Act 43; deny them insofar as they relate to Act 44.

69. Some of the allegations in paragraph 69 relate to Act 43; deny them insofar as they relate to Act 44.

70. In response to paragraph 70, state that they assume the GAB will carry out its statutory responsibilities; deny each and every remaining allegations in paragraph 70 insofar as they relate to Act 44.

71. Some of the allegations in paragraph 71 relate to Act 43; deny them insofar as they relate to Act 44.

SIXTH CLAIM

72. Paragraph 72 relates to Act 43.

- 73. Paragraph 73 relates to Act 43.
- 74. Paragraph 74 relates to Act 43.
- 75. Paragraph 75 relates to Act 43.
- 76. Paragraph 76 relates to Act 43.
- 77. Paragraph 77 relates to Act 43.
- 78. Paragraph 78 relates to Act 43.
- 79. Paragraph 79 relates to Act 43.

SEVENTH CLAIM

- 80. Paragraph 80 relates to Act 43.
- 81. Paragraph 81 relates to Act 43.
- 82. Paragraph 82 relates to Act 43.
- 83. Paragraph 83 relates to Act 43.
- 84. Paragraph 84 relates to Act 43.
- 85. Paragraph 85 relates to Act 43.
- 86. Paragraph 86 relates to Act 43.

EIGHTH CLAIM

87. Incorporate by reference their responses in paragraphs 1 through 86 above, as if set forth fully herein.

88. State that paragraph 88 states legal conclusions that need be and are neither admitted nor denied.

89. Some of the allegations in paragraph 89 relate to Act 43; deny them insofar as they relate to Act 44.

- 90. Paragraph 90 relates to Act 43.

91. Some of the allegations in paragraph 91 relate to Act 43; deny them insofar as they relate to Act 44.

92. Some of the allegations in paragraph 92 relate to Act 43; deny them insofar as they relate to Act 44.

93. Paragraph 93 relates to Act 43.

94. Some of the allegations in paragraph 94 relate to Act 43; deny them insofar as they relate to Act 44.

NINTH CLAIM

95. Paragraph 95 relates to Act 43.

96. Paragraph 96 relates to Act 43.

97. Paragraph 97 relates to Act 43.

98. Paragraph 98 relates to Act 43.

99. Paragraph 99 relates to Act 43.

100. Some of the allegations in paragraph 100 relate to Act 43; deny them insofar as they relate to Act 44.

101. Some of the allegations in paragraph 101 relate to Act 43; deny them insofar as they relate to Act 44; further state that even if the Congressional districts created by Act 44 were determined to be unconstitutional (which these defendants deny), it would be unlawful to conduct any future Congressional election using the currently unconstitutional districts established under legislation adopted in 2002, as even the plaintiffs recognize (*see* Compl., Dkt. # 1, ¶ 21) (“The 2010 census rendered the state’s 2002 legislative districts unconstitutional, which harms or threatens to harm the plaintiffs’ constitutional rights.”).

AFFIRMATIVE DEFENSES

102. The Amended Complaint fails to state a claim upon which relief may be granted with respect to Act 44.

103. The Amended Complaint improperly seeks to have this federal court grant relief against state officials by instructing such state officials how to conform their conduct to state law. *See Pennhurst, supra*, at ¶ 50.

104. The Amended Complaint fails to articulate workable standards by which this Court could measure the burden that the political gerrymander of Wisconsin's Congressional districts that the plaintiffs assert is embodied in Act 44 imposes on the plaintiffs' representational rights, and, therefore, does not present a justiciable controversy with respect thereto. *See Vieth v. Jubelirer*, 541 U.S. 267 (2004), and subsequent cases.

WHEREFORE, the Intervenor-Defendants, F. James Sensenbrenner, Jr., Thomas E. Petri, Paul D. Ryan, Jr., Reid J. Ribble, and Sean P. Duffy, demand judgment as follows:

1. Denying the declaratory and injunctive relief sought by the plaintiffs with respect to Act 44 and the Congressional districts that it has created.
2. Dismissing the Amended Complaint on its merits and with prejudice.
3. Awarding them their costs and reasonable attorneys' fees.
4. Such other and further relief as the Court may deem just and proper.

FOLEY & LARDNER LLP

Dated this 29th day of November, 2011.

s/ Kellen C. Kasper

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